Supreme Court, U. S.
FILED
OCT 7 1980
MICHAEL RODAK, JR., CLERK

80-555

No. .....

In The

Supreme Court of the United States

October Term, 1980

J. ALEX COTA, *Petitioner,*

v.

COUNTY OF LOS ANGELES, et al., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT, DIVISION ONE

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QUESTIONS PRESENTED

Whether the vote of respondents, on May 18, 1976, was an illegal act and an abuse of discretion and, therefore, wasteful of Federal, State and County funds subject to injunctive relief because of the following:

1. Ordering the operation and reconstruction of huge, penitentiary-like Sylmar Juvenile Hall violates the United States Constitution, Amendment Eight, prohibiting cruel and unusual punishment. (California State Constitution, Article I, § 17) C.T. 73:6-10; 81:21-31.

2. Whether respondents violated, and continue to violate the United States Constitution, Amendments 8 and 14, in depriving youngsters of due process:

   A. Placing minors in the 96 bed "special treatment" unit for "bizarre behavior" (locked in without plumbing).

   B. Incarcerating "status Offenders", who have committed no crime whatsoever, in juvenile hall, constitutes violation of Amendment 14, as well the Eighth Amendment.

3. Violation of the intent and purposes of the Federal Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601; 33 Stat. 1109) C.T. 54-56; 95:8-11.

4. Violation of the Federal Disaster Relief Act of 1974 (33 Stat. 143) providing: "MINIMUM STANDARDS FOR PUBLIC AND PRIVATE STRUCTURES Sec. 406. As a condition of any disaster loan or grant made . . ., the recipient shall agree that any repair or construction. . . shall be in accordance with applicable standards of safety, decency, and sanitation . . .", etc. (C.T. 95-97).

5. Reconstruction of Sylmar Juvenile Hall violates the Constitutional Doctrine of Least Restrictive Alternative (Shelton v Tucker, 364 U.S. 479)

   A. Violated California Welfare and Institutions Code Sections 209, 210, 850, 851.

6. Violation of United States Constitution, Amendment Eight, in conjunction with California Welfare and Institutions Code Sections 209 and 210. WIC Section 210 states:

   "Standards for juvenile halls. The Youth Authority shall adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors.

   ANY violation of such standards shall render a juvenile hall *unsuitable* for the confinement of minors for purposes of Section 209." (Emphasis added).

   A. California Youth Authority Standards for juvenile halls mandate, Page 11, Section 7: "PLUMBING INSTALLATION. . . All sleeping rooms in which minors are locked should be equipped with a drinking fountain, washbasin, and toilet . . .".

   B. The law is very clear on this violation by the respondents; yet the lower courts ignored both the law and the facts to erroneously accept the false statements of respondents that locking children in rooms without plumbing is only of "minor significance" and plaintiffs desire "almost a country club atmosphere" (Pages 22-23 Opinion of Court of Appeal). On this issue, to offset this obviously prejudiced statement of the courts below, the plaintiffs desire constructive work, discipline, training and education for detained youngsters in accordance with the law. Forcing the better-behaved youngsters to urinate and defecate on their cell-

room floors, because they have no ready access to plumbing is CRUEL AND UNUSUAL PUNISHMENT AND IN VIOLATION OF UNITED STATES CONSTITUTION, AMENDMENT EIGHT.

The Court of Appeal and the California State Supreme Court erroneously did not remand the case to allow plaintiffs to question said falsehoods by respondents. Children have been sent to the "cuckoo ward" for urinating or defecating in their locked rooms! This is a most serious matter. (Court of Appeal Opinion Page 23; Respondents letter to Court of Appeal, March 27, 1980; Answer to Petition for Hearing State Supreme Court).

7. Whether the lower courts were in error to let stand the following ruling which unjustly crippled the plaintiffs' case in presenting evidence regarding "threatened" operation of Sylmar Juvenile Hall:

"The Court will hold irrelevant any evidence which tends to establish procedures or operations of this juvenile facility, i.e. Sylmar, in futuro, except that procedure may be directly brought about or necessitated by reason of the building, its size and its location, that is, the physical factors that flow from entering into the contract with the Robert McKee Company, which is the principal subject of this action." (R.T. 194: 19-26).

A. One example (without excluding others) of how utterly ludicrous this erroneous court ruling unjustly excluded evidence was the lower courts' "convenient" rationalization that the illegal lack of plumbing was an operational matter; hence, in futuro. The plans, even before construction began, showed this violation would do injury to the vast majority of children.

There are other very serious defects in Sylmar which the lower courts failed to consider because of their erroneous rulings.

B. "The purpose of an injunction is to prevent future violations, . . .". United States v. W. T. Grant Co. 345 U.S. at 633. Recurrent violations are also subject to injunction as this W. T. Grant case makes clear. The lower courts, in the case at hand, were, and are, in gross error.

8. Whether the lower courts were in error to exclude consideration of declarations filed in law suit by Los Angeles County Probation Officers against the respondents herein.

A. At issue in the case at hand is the failure of the respondents and lower courts to consider positive alternatives to building and operating huge, remote, penitentiary-like institutions such as Sylmar Juvenile Hall.

B. The probation officers' suit shows not only the extreme reluctance to serve in juvenile hall (thus, unfit for children), but that public funds needed for "field work" and more positive programs are being wasted on huge, unconstitutional institutions (Sylmar Juvenile Hall), with built in cruel and unusual punishment.

C. Said declarations were a matter of public court record of which the lower courts herein could properly take judicial notice; especially, since it involves thousands of children, taxpayers and staff. (Court of Appeal Opinion, pages 19-20).

9. At issue are all constitutional and statutory questions raised by plaintiffs in the Complaint, pleadings, trial and appeals.

PARTIES IN THIS ACTION

PLAINTIFFS: J. Alex Cota, Joseph E. Grimmett, Robert L. Lyons, Dr. Kathleen E. McCann, Dr. Michael C. McCann, Marnesba T. Tackett, and John Jacob Randolph Tucker.

DEFENDANTS: COUNTY OF LOS ANGELES, A political subdivision of the State of California, Pete F. Schabarum, Kenneth Hahn, Edmund D. Edelman, James A. Hayes, and Baxter Ward, as members of said Board of Supervisors individually and jointly.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT, DIVISION ONE

The petitioner, J. Alex Cota, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Appeal of The State of California, Second Appellate District, Division One.

OPINION BELOW

The opinion of the Court of Appeal of The State of California Second District, Division One, appears in the Appendix hereto. Though a timely appeal was made to it, no opinion was rendered by the Supreme Court of the State of California when it denied a hearing on this matter.

JURISDICTION

The Judgment of the Court of Appeal of The State of California Second District was entered on April 30, 1980. A timely petition for rehearing was denied on May 29, 1980. The Supreme Court of the State of California, though a timely petition for hearing was filed, denied a hearing on July 9, 1980;

and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1257(3).

PRELIMINARY STATEMENT

Youngsters have recently committed suicide by hanging themselves after excessively prolonged incarceration at San Fernando Valley Juvenile Hall (AKA Sylmar Juvenile Hall). The plaintiffs in this action sought (and still seek) to enjoin the operation and construction of this enormous concrete penitentiary for children to prevent tragedies like these, as well as others, from taking place.

The respondents and the lower courts have utterly disregarded Federal and State Constitutional, as well as statutory law, to the very great injury of thousands upon thousands of children and millions of taxpayers. Some insight into this grave injustice can be seen in the following:

> ". . . I have to speak out strongly against the large institution which regiments, contaminates, which provides an almost jungle-like experience in which young people are hurt more than they are helped." Former State Chairman of The California Youth Authority Board, Mr. Allen F. Breed (R.T. 319:28; 320:1-4).
>
> "Q Do you think that in order to determine whether a large facility is being conducted in all respects as nearly like a home as possible, one would have to wait until that facility is operational?
>
> A No. . . . you don't conduct a home-like atmosphere in a bastille." The Hon. Judge William P. Hogoboom, former Presiding Judge of Juvenile Court, Los Angeles County, who testified against rebuilding Sylmar Juvenile Hall. (R.T. 1094:16-28; 1095:1-6).
>
> ". . . the inadequacies at Central Juvenile Hall. There are certain sections there that have no toilets in the room. I think you went into that earlier about people banging on the doors in order to get the attention of the counselors.

Q So—

A I would, if it were up to me, I would, you know, phase those sections out. . . .

Q Do you know that the new units at Sylmar are not going to have toilets in the room, they are going to have gang toilets just the way at Central?

A No, I wasn't aware of that." The Hon. Peter S. Smith, Juvenile Court Judge, Los Angeles County (R.T. 1427:10-28; 1428:1-3).

"An inference may be drawn that this facility was designed to fit the minors to the system, and not designed to fit or develop a program to the minors." Announcement of Intended Decision by Trial Judge, August J. Goebel (C.T. 279:21-23).

". . . If I am forced back into an institution I may have a nervous breakdown. I believed myself on the edge of a breakdown when I left the institution." Deputy Probation Officer, Richard S. Neal informed of transfer to Sylmar Juvenile Hall. One of many, many Deputy Probation Officers declaring extreme reluctance toward being re-assigned to juvenile hall duty—resulting in their bringing a lawsuit against same respondents herein. (See declarations Appellant's Petition for Rehearing in Court of Appeal)

"Youth Being Detained in Sylmar Juvenile Hall Commits Suicide

A 16-year-old Montebello youth hanged himself in the infirmary at San Fernando Valley Juvenile Hall in Sylmar, it was reported Thursday.

*** Los Angeles Times** Fri. Aug. 29, 1980—**Part I P. 21"**

The complaint herein raised the issue of extreme remoteness of Sylmar Juvenile Hall. This fact, obvious even before construction began, was callously ignored by the respondents and the lower courts. Parental visits are severely hampered by the location of Sylmar Juvenile Hall. Montebello is approximately 40 miles or more from Sylmar. This constitutes cruel and unusual punishment under the United States Constitution, Amendment Eight. Minors are being held without benefit of bail in a huge juvenile jail which is unsuitable and unfit to render rehabilitative care or custody, far removed from parental visitation which can help lessen despondency or rejection. (C.T. 274:12-23)

DEAD—A 15-year-old boy. On Friday, August 1, 1980, he hung himself with his own belt. He had been arrested on February 23, 1980 and detained at Sylmar Juvenile Hall. While at Sylmar, he was put in the 96 bed so-called "special treatment" unit from April 9, 1980 to June 16, 1980, then sent to Kirby Center where he hung himself. Approximately 115 days in so-called temporary detention at Sylmar Juvenile Hall, 69 days of which were wasted in the "special treatment" unit.

The complaint herein raised the issues of not only excessively prolonged "temporary detention" instead of prompt adjudication and placement, but also the constitutionality of the so-called 96 bed "special treatment" unit.

250 DAYS FOR PETTY THEFT OF SOME POLAROID FILM—A 13 year old girl, arrested for taking some film, spent 250 days in juvenile hall. She was threatened with further detention in the 96 bed "special treatment" unit at Sylmar Juvenile Hall, until some people who cared, had her placed in a more constructive, homelike setting. However, the question remains why she was detained for so terribly long in juvenile hall, instead of being promptly placed or sent home? The answer: Mis-spent tax funds are being wasted on huge juvenile "warehouses" like Sylmar, rather than utilizing more positive alternatives.

(NAMES OF ABOVE CHILDREN SENT IN SEPARATE LETTER).

Among the many issues raised in the Complaint in this action (without waiving the others) which have bearing on the environment in a juvenile hall, like Sylmar, and cause suicidal despondency are the following:

". . . E. Sylmar Juvenile Hall will violate the California State Constitution and the United States Constitution for the following reasons:

1. Solitary confinement units, as are planned for Sylmar Juvenile Hall, will constitute "*cruel and unusual punishment*" in violation of the provisions of the California State (Article I, Section 17) and the United States Constitution (Eighth Amendment);

2. The failure to provide a more proper and suitable detention facility (for the reasons hereinbefore alleged) will constitute a violation of the United States Constitution;

3. The failure to provide the detained juveniles at Sylmar from adverse physical, mental and spiritual effects of the type of incarceration resulting from such a huge juvenile detention facility (for the reasons hereinbefore alleged) shall constitute a violation of the due process clauses of the United States (14th amendment) and the California State Constitutions (Article I, Sec. 7(a).)" (C.T. 10: 20-32; 11:1).

The complaint also states (among other things) that Sylmar Juvenile Hall will be a penal-like institution in violation of California Welfare and Institutions Code Section 851, since:

". . . a. It will cause, inter alia: regimentation, institutional factory-like hours, coldly impersonal relationships between staff and children; the shunting and transferring of youngsters from unit to unit as the need for "detention and control" dictates, thus further alienating the juveniles from constructive adult influence; uniform, often ill-fitting clothing; *encouragement of undue and improper detention practices resulting in over-long detention*

periods; much idleness and "dead-time"; solitary confinement; mixing of hardcore delinquents with minor "status" offenders; lack of privacy; overcrowded facilities; concrete nature of physical structure (interior and exterior) with high, prison-like walls; crimes within the facility by inmates from assault and battery, petty thievery, racial and gang-related violence, sexual attacks, etc; lack of respect for personal property;

b. Its location will far remove juveniles in the average case from their homes and families;

c. It will mix W & I C § 601 "status" offenders (runaways, truants, curfew violators, (drug abusers, car thieves, robbers, homosexuals, rapists, etc.);

d. It will mix mentally disturbed juveniles with normal juveniles detained only as "status" offenders;

e. It will bring together juveniles whose cases have been adjudicated and are being held in juvenile hall pending placement, with those juveniles whose cases are still awaiting a hearing; . . ." . . . etc., etc. (Reference to Complaint C.T. 3:12-32; 4:1-16).

A full and fair hearing of the above issues, and more set out in the complaint, was unjustly denied to the plaintiffs herein by the following clearly erroneous ruling of the trial court:

". . . under the pleadings and the issues as framed, any evidence that would tend to establish future procedures or operations of a juvenile hall by the Probation Department of Los Angeles County, except as they would be necessitated by reason of the building or buildings, their size, design and/or location, was irrelevant. . .". (C.T. 269:22-27).

The Court of Appeal erroneously states: ". . . Here, the complaint sought injunction only against *construction* of the facility—it did not seek injunction against *future*

> *operation* or *use* of the facility. Obviously, the evidence of future use and operation was beyond the scope of the issues raised by the pleadings." (Court of Appeal Opinion, Page 18).

The petitioner herein always maintained that the complaint states a substantial cause of action against "operations". The respondents clearly voted for, and ordered the construction of this concrete monstrosity of a juvenile penitentiary to be used to incarcerate children. It was, and now is, to be used or operated to confine children. The plaintiffs had, and have, a right to seek injunctive relief and question even its "threatened" operation for it was a proven failure when first built (C.T. 38). It was proper to bring this action prior to completion, or even before construction began, to halt its wasteful use and save the taxpayers (and children) the greatest amount of suffering. The fact that construction proceeded makes the injury to the taxpayers and children all the more painful, since the illegalities or violations set out in the complaint are no longer merely "threatened" but, now, are actually taking place at Sylmar Juvenile Hall.

The fact that the plaintiffs tried to stop the construction of this concrete monstrosity, before it went into operation does not lessen the enormity of the error committed by the lower courts—It is infinitely worse, as the suicides of the youngsters amply demonstrate.

"The purpose of an injunction is to prevent future violations." United States v. W. T. Grant Co. 345 U.S. at 633. California Code of Civil Procedure, Section 526 states:

> "An injunction may be granted in the following cases:
>
> 1. When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or *continuance* of the act complained of, . . .

> 2. When it appears by the complaint . . . that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action;
>
> 3. When it appears, during the litigation, that a party to the action is doing, or *threatens, or is about to do,* . . .
>
> 6. Where the restraint is necessary to prevent a multiplicity of judicial proceedings; . . .". (Emphasis added).

It is clear the plaintiffs were properly seeking to enjoin not only the construction, but the operation or use of Sylmar Juvenile Hall for the confinement of children. Halting the construction would have automatically halted the use or operation. The object of the complaint has always been to halt the use of Sylmar Juvenile Hall for children, and it was proper to take issue with all "threatened" operations before the defendants wasted federal and local tax funds to rebuild this proven failure. Tax funds are very desperately needed for more positive alternatives to useless incarceration in Sylmar Juvenile Hall.

Had the respondents changed their plans and used Sylmar for something other than for confining minors, the plaintiffs would have gladly withdrawn this action. The fact that the respondents persisted with their illegal action makes this action even more imperative. The Court of Appeal admits that this matter is not moot in stating:

> ". . . the public interest compels determination of the validity of respondent's action, and judicial policy favors review of the matter on the merits we conclude that the appeal should not be dismissed as moot." (Court of Appeal Opinion, page 3).

This matter is not only not moot, but children are committing suicide! It is unconscionable, and against even California law to have the petitioner herein start all over again with another law suit, when children and taxpayers are suffering the continuing consequences of the respondents' illegal actions. (California Code of Civil Procedure Section 526(6) supra). As stated in United States v. W. T. Grant Co. 345 U.S. at page 633:

> "Along with its power to hear the case, the court's power to grant injunctive relief survives discontinuance of the illegal conduct . . . . The necessary determination is that there exists some cognizable danger of recurrent violation . . .".

It is evident, in the instant case, that the danger to children and waste of taxpayer funds is continuing and the entire use and operation, or any further construction contemplated should be immediately enjoined, as was done in the case of Morales v. Turman, 383 F.Supp.53.

STATEMENT OF THE CASE

Contrary to Federal and State Constitutional and statutory law, the respondents, the Los Angeles County Board of Supervisors, ordered the reconstruction and operation, with Federal and local tax funds, of the huge penitentiary-like San Fernando (AKA Sylmar) Valley Juvenile Hall which had been destroyed by an earthquake. The petitioner, J. Alex Cota, and other taxpayers, sued to enjoin this illegal and extremely wasteful expenditure of approximately $18,000,000.00 ($9,170,000.00 Federal Disaster Relief Funds; C.T. 280:4). Approximately $7,500,000.00 is wasted in operating this institution yearly.

This suit was brought under California Code of Civil Procedure Section 526a, which allows a taxpayer to bring such an action. As stated in Wirin v. Parker, 48 Cal.2d 890, at 894:

> ". . . The Code of Civil Procedure, Section 526a, provides that plaintiff may maintain an action to restrain the expenditure of public funds for illegal purposes. It is immaterial that the amount of the illegal expenditures is

> small or that the illegal procedures actually permit a saving of tax funds (Citation omitted). It is elementary that public officials must themselves obey the law. It has been expressly held in this state that expediency cannot justify the denial of an injunction against the expenditure of public funds in violation of the constitutional guarantees here involved." (Cites Wirin v. Horrall, 85 Cal. App. 497, 504-506).

On May 18, 1976, the respondents voted to rebuild, on the same site, and on much of the same remaining foundations, a basically similar institution as that which was destroyed. This complaint was filed on June 29, 1976 seeking to enjoin the construction and use or operation of Sylmar Juvenile Hall as an unsuitable place to confine children. The complaint also specifically requested: ". . . 6. That said action by defendants, and each of them, be determined to be illegal and void and of no effect; . . . 9. For such other and further relief as the Court may deem just and proper." . . . (C.T. 15: 20-26).

A prompt taxpayers' action was vital even before construction began, because the plans, size, location, intentions and actions taken by the respondents abundantly evidenced that cruel and unusual punishment was, and is, built into this huge, isolated, concrete-block institution; hence, in violation of the United States Constitution, Amendment Eight, and the Constitution of the State of California, Article 1, Section 17 (cited in complaint C.T. 10:20-32; 81:21-29—also cited in appeals to California Court of Appeal and State Supreme Court).

To the great injury of thousands of children and millions of taxpayers, Federal Disaster Relief and local tax funds were, and are being, misused by the respondents. To cite an example, without waiving others, the plans not only showed the Sylmar replacement to be essentially the same as the original overcrowded failure (C.T. 38), but the entire institution was, and is, basically the same design as the solitary confinement units, X-Y, at Los Angeles County Central Juvenile Hall. In fact, the regular room/cells at Sylmar are worse, and more penal-like

than the solitary confinement cells, as will be shown hereinafter. Furthermore, this very same institution had a previous history which parallels that of other existing Los Angeles County Juvenile Halls. The trial court put on "blinders" and excluded vital evidence and testimony which would show the great injury and waste involved in operating an institution constructed in this manner.

Located in a remote section of Los Angeles County, California, the thirty (30) acre site of Sylmar Juvenile Hall (owned by respondent County) is near an earthquake fault. When the earthquake of Fedruary 9, 1971 struck, it completely destroyed the original Sylmar Juvenile Hall. The respondents applied for, and received, federal disaster relief funds to rebuild Sylmar, but refused, in spite of public protest, to use said federal funds towards smaller, more community based, home-like facilities as called for by the Federal Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93-415, 88 Stat. 1109—cited in complaint C.T. 12:17-28; 42 U.S.C. 5601, et seq.—Also C.T. pages 55-56).

This Federal Juvenile Justice and Delinquency Act (supra) is in keeping with the Constitutional Doctrine of Least Restrictive Alternative which the petitioner herein asserted at all stages of this action in the courts below.

The principle of the least restrictive alternative requires that when the state infringes upon a fundamental constitutional right, it may do so only by choosing the least restrictive alternative which will effectuate the state's purpose. See Shelton v. Tucker, 364 U.S. 479 (1960):

> "Even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. (Citations omitted). The breadth of legislative abridgment must be viewed in light of the less drastic means for achieving the same basic purpose." (Citations omitted) Shelton v. Tucker 364 U.S. at 488. (Also, cited trial court Announcement of Intended Decision, C.T. 268:25-28; 270:21-22).

Sylmar Juvenile Hall is a maximum security institution for minors who are supposed to be presumed innocent until proven guilty. Its huge size means that youngsters whose cases have been adjudicated (found guilty) are held together with the innocent. The plans and testimony absolutely establish this fact. This is clearly in violation of the doctrine of least restrictive alternative. To cite still another example, the regular room/cells are more harsh and restrictive for the better-behaved youngster than solitary confinement is for the worst-behaved minor—This could, and can, readily be seen from the building plans, even before construction began. (R.T. 651-655; Plaintiffs' Exhibit 20, etc.).

The major function of a juvenile hall is to hold or detain a minor while awaiting a court hearing to determine guilt or innocence. A minor, who has no right to bail, still must be presumed innocent until found otherwise. However, the huge prison-like "school of crime" environment of Sylmar makes an utter mockery of the constitutional presumption of innocence. The minor is detained in an institution that fosters laziness, lack of respect for the law, as well as those in charge of his custody.

> "Ultimately, however, we confront the reality of that portion of the Juvenile Court process with which we deal in this case. A boy is charged with misconduct. The boy is committed to an institution where he may be restrained of liberty for years. It is of no constitutional consequence—and of limited practical meaning—that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a "receiving home" or an "industrial school" for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. His world becomes "a building with whitewashed walls, regimented routine and institutional hours. . . ." Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and "delinquents" confined with him for anything from waywardness to rape and homicide.

In view of this, it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase "due process." In Re Gault, 387 U.S. at 27, 28.

The huge size of Sylmar Juvenile Hall (377+ beds—confines 5,000+ children per annum) with its concrete beds, 40 solitary confinement cell unit, 96 bed "cuckoo ward", 16 foot high cement block wall, remote, isolated location, locked room/cells without plumbing, prison-like regimentation, overcrowding (recently, as many as 100+ over population), idleness, mixing of hardcore with more innocent minors, penitentiary-like tension (directly due to huge size of population where unknown factors of individual traits are thereby increased), etc., etc.,—all these defects, and more, contribute to an extremely negative environment which makes the huge juvenile hall merely a training ground for future inmates of an adult penitentiary. This is contrary to the "extreme caution" needed to "protect" the innocent child as called for IN RE WINSHIP:

> ". . . We turn to the question whether juveniles, like adults, are constitutionally entitled to proof beyond a reasonable doubt when they are charged with violation of a criminal law. The same considerations that demand extreme caution in fact-finding to protect the innocent adult apply as well to the innocent child." IN RE WINSHIP 397 U.S. 358 (1970). See C.T. 61:2-4.

California law would seem (were it not for the unjust decisions in this case) to adhere to the Constitutional doctrine of least restrictive alternative. The plaintiffs herein cited, as a major mainstay in this action, California Welfare and Institutions Code Section 851 which states:

> "Nature; conduct. The juvenile hall shall not be in, or connected with, any jail or prison, and shall not be deemed to be nor be treated as a penal institution. It shall be conducted in all respects as nearly like a home as possible."

The respondents and the lower courts ignored this basically sound law, which adheres to the precepts expounded IN RE WINSHIP, just as they ignored the United States Constitution, the California State Constitution, which proscribe cruel and unusual punishment, and the Federal Juvenile Justice and Delinquency Prevention Act of 1974 (cited supra); Indeed, the respondents and the Courts below make a mockery not only of the preceding cited law, but all that cited in the Complaint (points and authorities) in their building, operating and confining children in the concrete monstrosity, Sylmar Juvenile Hall.

The original Sylmar Juvenile Hall was built in 1965-66 over the protests of many, many citizens, including the petitioner herein. Protests, at that time, were that the building of Sylmar would be wasteful of millions of tax dollars, since the history of huge juvenile halls has always been the same; namely, they immediately become overcrowded and ineffective—merely holding pens or "inhuman" warehouses which neglect true discipline, education and training of children. They foster "the Big House" attitude of disrespect for the law, laziness and idleness. Protests notwithstanding, the respondents built the original Sylmar Juvenile Hall. As predicted, it was shortly overcrowded and ineffective with children sleeping on the floor (C.T. 38).

The location of Sylmar Juvenile Hall is ideal for a leper colony, This makes it clearly in violation of California Welfare and Institutions Code Section 202(a) which states:

> "The purpose of this chapter is . . . to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when *necessary for* his welfare or *for the* safety and protection of the public ***; and, when the minor is removed from his own family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents. . . .".

It is of vital importance to the taxpayers that family ties be strengthened to encourage parental responsibility. It costs as much to keep a minor in juvenile hall as it does to stay at the Century Plaza Hotel. On page 5 of the Court of Appeal opinion, the Court states the cost of detention per juvenile per day in Los Angeles County is $58.97; approximately $21,524 annually. However, this was the cost in 1976-77. The current cost, because of inflation, is considerably higher. Thus, incarcerating youngsters in an extremely remote section of Los Angeles County, where family visits and ties are severely curtailed, while a youngster is merely awaiting a hearing on guilt or innocence, is not only extremely wasteful of tax money, but contrary to law. It is also a violation of the United States Constitution, Amendment Eight, since it constitutes cruel and unusual punishment.

The 30 acre site, upon which Sylmar Juvenile Hall sits, is located at 15900 Filbert Street, Sylmar, California. It is on a deadend, desolate street which travels along a 16 foot high, lengthy cement-block wall; part of the juvenile hall's enclosure. It parallels a highway or freeway that has no on/off ramp for ready access to the site and, thus, further hampers parental visits which are already unduly restricted. Institutional tensions rise to greater heights where children feel totally rejected. A parent who visits helps alleviate these tensions, which contribute to an already negative environment.

Sylmar Juvenile Hall is approximately 28.3 miles north of the Los Angeles Civic Center. It is such an isolated site that the trial judge, all his aides, the County Counsel and a Probation Officer became utterly lost in the surrounding hills on the day the trial court made a personal inspection of the institution. It is lined up along railroad tracks beside a number of large storage warehouses. Sylmar Juvenile Hall has concrete beds (readily seen in plans—"physical factors") for the children, which have been found, by the Los Angeles County Sheriff's Department, to be unfit and in violation of the minimum jail standards for adults under the law (California Administrative Code Section

1081, Title 15). Concrete beds are not "home-like" and, hence, violate California Welfare and Institutions Code Section 851 (supra).

Sylmar Juvenile Hall presently (also readily seen in construction plans) has plumbing external to the regular sleeping room/cells for the better-behaved youngsters (also found unfit and in violation of law for adult prisoners; hence, worse for minors). It has individual plumbing for the worst-behaved or disciplinary problem juvenile in the 40 solitary confinement room/cells. Still worse, as will be shown, the 96 bed unit, in which "severely emotionally disturbed" youngsters are kept for months on end, are, like those of the better-behaved minors, completely without plumbing. This is cruel and unusual punishment, when one realizes that these children are locked in their rooms all night.

The facts, building plans, and evidence clearly show, as they did at the inception of this action, that only 40 solitary confinement cells have the legally required plumbing in individual rooms. The total bed population is 377+; subtract the 40 solitary confinement cells and this leaves the vast majority of 337, or more, rooms, in which children are locked all night, without the plumbing required by law. The facts, evidence and testimony show that the better-behaved children must kick and pound on their doors in order to go to the restroom down the hall. When their doors are not opened in time, they are forced to urinate or defecate on the floor of their cells. The Court of Appeal in its opinion, euphemistically tried to dismiss this sewer-like defect as minor in nature only affecting "some" of the rooms (Court of Appeal opinion page 20). However, 337+ (the vast majority) is not merely "some". Furthermore, 96 beds populated by severely emotionally disturbed minors, with even more nervousness than the "regular" youngsters without plumbing, constitutes exacerbated cruel and unusual punishment contrary to The United States Constitution, Amendment Eight.

The lower courts not only ignored the Constitution and statutory law on this matter, but also the testimony of Los Angeles County Deputy Probation Officer, William C. Buchanan, who worked at Central Juvenile Hall, Los Padrinos Juvenile Hall and Sylmar Juvenile Hall:

> "THE WITNESS: Yes. The very young wards tend to have the problem of not being able to wait long enough for us to let them out of the rooms, . . . It depends also on the night staff. Some of them are a little slower to get to the rooms than others. I have had some wards tell me that some of the night staff either don't seem to be there, or care; they have had to knock on their doors for substantial lengths of time." (R.T. 596; quotation on R.T. 886; 20-28; 887: 1-2).
>
> Q Now, what do the children do if they have to go to the head at night:
>
> A Knock on their door. . . . . .
>
> Q What happens if the supervisor is on the telephone or involved in other things and the children are knocking on the door?
>
> A The children would have to wait until the staff member was finished with what he was doing. . . . . .
>
> Q What is the effect of the banging on the door? Can that be heard all the way down the hallway in the other rooms? . . .
>
> A That can be heard through most of the hallways in which that room is located. If they bang very loudly it can be heard down the other hallway as well. . . ." R.T. 771: 16, 772:1.

Contrary to Constitutional and statutory law, the respondents have set aside (shown in plans even before construction began) a 96 bed so-called "intensive treatment" unit at Sylmar Juvenile Hall for allegedly severely emotionally disturbed children. This unit also does not have the required plumbing,

though children are locked in their rooms. There is no wall separating this unit from the rest of the institution. Its inmates are recruited for "bizarre behavior" (plaintiff's exhibits 14, 16) from all the County juvenile halls (Los Angeles County has two other huge juvenile halls patterned along the same basic design as Sylmar). Children have been incarcerated for many long months in this constitutionally questionable unit.

The 96 bed so-called "Intensive Treatment" unit at Sylmar is a violation of the constitutional doctrine of least restrictive alternative and The United States Constitution, Amendments Eight and Fourteen. It violates the California Welfare Institutions Code § 5000, *et. seq.*, (Lanterman-Petris-Short Act). The trial court's erroneous ruling barring evidence about operations unjustly hampered plaintiffs' case to show all the violations such a constitutionally questionable unit commits. However, there is enough to show that it must be promptly enjoined.

". . . however benign the purposes for which members of the plaintiff class are held in custody, and whatever the sad necessities which prompt their detention, they are held in penal condition. Where the State, as parens patriae, imposes such detention, it can meet the Constitution's requirement of due process and prohibition of cruel and unusual punishment if, and only if, it furnishes adequate treatment to the detainee." Martarella v. Kelley, 349 F. Supp. 575 at 585.

The complaint states (among many other issues) that the action taken by the respondent Board of Supervisors (C.T. 3: 7 et seq.) ". . . was, and is, an illegal act and an abuse of discretion . . . in that it violates the following provisions of law . . .: (C.T. 5:1 et seq.) a. It will violate the minimum standards of the California Youth Authority controlling Juvenile Halls (*set forth in Standards for Juvenile Halls*) . . ., inter alia: . . . i) Its urine smells; *inadequate access to restrooms,* . . .". C.T. 6:7-8. This violation was also complained of in the plaintiffs' memorandum of points and authorities (C.T. 76:9).

During the personal inspection tour of Sylmar Juvenile Hall by the trial court, the petitioner herein specifically pointed out this violation to the court. However, the trial court utterly refused to apply the law to the facts, pleadings, and evidence as requested in the complaint. The lower courts seek to evade this issue by saying it is a matter of operation, though the violation could be readily seen in the plans and construction. The argument presented was that the staff could merely open the doors. However, this specious tack not only evades the law which requires adequate plumbing in all locked rooms, but runs contrary to actual practice.

The California Youth Authority Standards for Juvenile Halls specifically mandate on Page 11, Section 7: "Plumbing Installation . . . All sleeping rooms in which minors are locked should be equipped with a drinking fountain, washbasin, and toilet. . . .". The California Welfare and Institutions Code Section 210 mandates: ". . . Any violation of such standards shall render a juvenile hall unsuitable for the confinement of minors for purposes of section 209.

It can well be argued that the lack of plumbing is also in violation of California Welfare and Institutions Code Section 851 which states: "The juvenile hall . . . shall not be deemed to be nor be treated as a penal institution. It shall be conducted in all respects as nearly like a home as possible."

The lack of plumbing disregards United States Constitution, Amendment Eight which prohibits cruel and unusual punishment (as does the California State Constitution, Article I, Section 17). The petitioner reasserted this illegality before the Court of Appeal and the California State Supreme Court. As a result, the respondents wrote a letter dated March 27, 1980 to the Court of Appeal which is patently false. This Respondents letter of March 27, 1980 states: ". . . 2 .) ..... the problem of going to the bathroom at night is shown to be clearly an *operational* matter. The lack of an individual toilet in a room is not a problem unless the minor's door is *locked* by the staff *and* the staff do not *respond appropriately* to a signal from the minor after the door is locked. . . . .

Mr. Hervle O. E. Lowrey, Superintendent of San Fernando Valley Juvenile Hall (Sylmar), if called, would testify under oath and from personal knowledge as follows: . . . .

". . . 3. In the last year 31 ward grievances were filed. These dealt with such subjects as grades, program, food, and shower-time. Not one grievance mentioned beds or going-to-the-bathroom.

4. Approximately 5,000 wards are detained at Sylmar annually.

5. When a minor knocks on his or her door at night, he or she is taken to the bathroom by a staff member. Every thirty minutes during the night each ward is personally checked by a staff member to see if he or she is all right." (Letter to Justice Bernard S. Jefferson, Presiding Justice of Division One, Second Appellate District California Court of Appeal, March 27, 1980 signed by Deputy County Counsel Paul T. Hanson.)

The respondents repeated these same falsehoods, cited in the above excerpts from their letter, to the California Supreme Court, in their Answer to the appellant's Petition for Hearing. As can be seen, the Court of Appeal designedly relied upon these false statements by Mr. Hanson, as did, in effect, the State Supreme Court. Please see Page 4:6-13 of Respondents' Answer to Petition for Hearing dated June 19, 1980.

Erroneous rulings of the lower courts barred this vital testimony. The truth is that had Mr. Lowrey been placed under oath AGAIN and testified, as directed by the respondents per their letter of March 27, 1980 and their Answer before the State Supreme Court, Mr. Lowrey would become subject to a charge of perjury. Prior to trial, the plaintiffs deposed Mr. Lowrey while he was Superintendent of Central Juvenile Hall. In his deposition, Mr. Lowrey admitted that children have been placed in unit "O", the severely emotionally disturbed unit (AKA the "cuckoo ward" amongst the children) because "he is

just a bedwetter. . . . We don't have that many places around where we have got toilets." . . . (Lowrey deposition Vol. I, 121:11-12).

At Central Juvenile Hall, severely emotionally disturbed (according to the criteria set by respondents which are clearly illegal) minors are detained in unit "O". (Lowrey Deposition 117:1-5). This also includes the homosexual type of ward. (Lowrey deposition 121: 12-15).

> "Q Would it be fair to say that some kids in Unit O are severely emotionally disturbed—seriously emotionally disturbed?
>
> A They may have some severely emotionally disturbed kids there, yes. (Lowrey Deposition 117: 1-5).
>
> Mr. Lowrey's deposition further states: ". . . Another advantage is that the Unit O's have toilets in their rooms. Many of these emotionally disturbed boys have problems like that they wet the bed and things where in a regular line unit we don't have toilets in the rooms. And if a kid wets his bed, then the other kids tend to get on him, "You are a bed-wetter," and this kind of stuff. By having the toilet in the room, it tends to take the pressure off of them." (Lowrey deposition 120: 11-18).
>
> ". . . A bed-wetter, for example—it may be that his problem is that he is just a bed-wetter. We don't have that many places around where we have got toilets. It may be that he has a homosexual problem and he can't get along in the line unit. You know, there may be any number of reasons why we put him in Unit O under our program now." (Lowrey deposition 121: 10-15).

Except for 40 solitary confinement cells, Sylmar Juvenile Hall, as the evidence abundantly shows (Plaintiff's exhibits of construction plans) has no plumbing in locked sleeping rooms, and this adversely affects 337+ children. This is not a minor violation of law; especially, where the 96 bed unit for severely

emotionally disturbed youngsters at Sylmar is worse than the Unit "O" of Central. As Mr. Lowrey's deposition reveals, Unit O has the very necessary plumbing, BUT NOT THE 96 BED UNIT AT SYLMAR—IT IS WORSE THAN CENTRAL!

A careful reading of the erroneous "Announcement of Intended Decison" of the trial court reveals an overly eager readiness and prejudice to assume that "defiance" was the reason a minor would urinate or defecate on the floor of his/her locked room. (C.T. 280:22-28). The Court of Appeal also grasped this sorry excuse to refuse to enforce the law, as did the State Supreme Court. It is clear that the respondents were encouraged by this lower court bias to deliberately state falsehoods for the courts to rely upon to the great detriment of the plaintiffs' case and the welfare of the children.

Mr. Lowrey's deposition states: ". . . We have had instances of boys defecating in their rooms, but not according to your analysis of due to the fact that someone didn't let him out of the room, but rather because the *boy is shy and timid* and he can't go in the unit next to—other boys can't—you know, they can't take a sit down in the open." . . . Emphasis added; Lowrey deposition Vol. I, 204:2-8.

The shockingly disgusting aspect to this illegality is that the "shy and timid" youngster is pushed toward misbehavior by this vulgar institutional stupidity. The shy and timid boy, or girl, under the circumstances, can soon learn that if he misbehaves, he is sent to solitary confinement where he has his own drinking fountain, washbasin and commode. This gross violation of law is a travesty. It robs the taxpayers of any hope that a monstrous institution like Sylmar is money well spent toward the rehabilitating of any youngsters.

It is disgustingly ludicrous for the respondents to have the Court believe that the "ward-grievance procedure" Mr. Hanson refers to in his letter to the Court of Appeal (March 27, 1980, Page 2) would apply to a shy and timid boy, or any ward, who is forced to urinate or defecate on the floor. It is just not

something the youngster would want to make known; especially, not the shy and timid. It was, and is, gross error of the lower courts to rely upon the falsehoods of respondents, and not have Mr. Lowrey placed under oath.

It is the "severely emotionally disturbed minors in the 96 bed "cuckoo unit" and the hundreds of better-behaved youngsters in regular units, all without the legally required plumbing, who must suffer from this sewer-like illegality.

Even after being locked in all night, the juveniles still have to wait to go to the restroom: ". . . No, they're not all permitted to go there at the same time. . . . It's done by calling up certain boys, certain number of boys, to use the restroom at a time. . . . Because there's only so many toilets and so many sinks." (Lowrey Deposition, Vol. II, 19:17-22.)

It is important to point out that no evidence was introduced to show that children (the "defiant" ones) in solitary urinated or defecated on the floors of their cells. The trial court and the Court of Appeal, in their unfortunate prejudice toward plaintiffs' case, were quite wrong to assume that children urinated or defecated "more out of defiance of authority than as a matter of necessity." (Opinion of Court of Appeal Page 23, footnote; see also, C.T. Trial Court's Announcement of Intended Decision, 280:20-28; 281:1; compare with testimony of Deputy Probation Officer, William C. Buchanan, R.T. 771:16, 772:1).

The Complaint herein raised a very serious issue of abuse so typical of the huge juvenile hall (like Sylmar); namely, overly prolonged detention of youngsters in for relatively minor offenses (C.T. 3:28-29). Mr. Lowrey's deposition states:

> ". . . There are minors detained for minor offenses now who are, in essence, new to the system. There are minors who are detained for minor offenses now who have been in the system a long time." (Lowrey deposition Vol. I, 38:16-19).

This is an extremely important issue, which was wrongfully barred by the trial court's ruling and is due to the huge size of juvenile hall. Tax funds wasted on huge juvenile halls, such as Sylmar, deprive the community of vital alternative programs in which to place youngsters in the minor offense category; hence, they languish far too long in the degrading environment of a huge juvenile hall like Sylmar.

Because of its huge size, the big juvenile hall (Sylmar, Central, Los Padrinos) becomes a convenient "inhuman" warehouse. This huge holding pen or warehouse makes it easy to confine youngsters for months on end instead of placing them in a suitable home, work camp or any meaningfully constructive program. In fact, the huge juvenile hall is wasting so much tax money that important field services are curtailed and field deputy probation officers are being transferred back into the useless detention duty of juvenile hall. Please refer to the Declaration of Richard S. Neal, Los Angeles County Deputy Probation Officer II.

The cases of the two boys who committed suicide after long sessions at Sylmar, and the case of the 13-year-old girl who spent 250 days in juvenile hall for a minor petty theft are illustrative of the damage done to minors by excessively long periods of confinement in this huge juvenile hall environment. However, at the present time and just as the plaintiffs predicted in the complaint herein, there are many, many others youngsters being detained for many long months at Sylmar. This constitutes a violation of the Constitutional Doctrine of Least Restrictive alternative (cites supra); It constitutes a violation of the United States Constitution Amendment Eight, which prohibits cruel and unusual punishment. Had the trial court, and lower appellate courts, granted the injunction requested herein, no suicide would have occurred at Sylmar and prolonged, injurious detention of minors would not have taken place as predicted in the complaint herein.

As stated in United States v. W. T. Grant Co. et al.: ". . . Along with its power to hear the case, the court's power to grant injunctive relief survives discontinuance of the illegal conduct. (Citations omitted). The *PURPOSE OF AN INJUNCTION IS TO PREVENT FUTURE VIOLATIONS, . . .*". (emphasis added). United States v. W. T. Grant Co. 345 U.S. 633. Furthermore, the case of Fretz v. Burke states: "Though the office of an injunction is preventive rather than remedial an injunction may be granted as to past acts if there is evidence that they will probably recur." Fretz v. Burke, 247 C.A.2d 741.

REASONS FOR GRANTING THE WRIT

The respondents have, and continue to do so, violated the United States Constitution and other laws as stated above. The fact that two teenagers committed suicide in August, 1980, after excessively prolonged confinement at Sylmar Juvenile Hall, is so grave an indictment against the wasteful operation and construction of such a huge concrete institution that it cries out for an injunction to shut it down. However, there are so many, many other cases of gross miscarriage of justice at Sylmar Juvenile Hall that their very numbers outweigh even these extreme cases of suicide.

California detains three times the national average of youngsters in its wasteful juvenile halls. Their very huge size facilitates this constitutional abuse which must be enjoined.

No more than a cowboy can get to know the individual steer, in a huge herd being shipped to market, can the staff at Sylmar Juvenile Hall begin to understand the individual minor so as to administer firm discipline, teach respect for the law, and good citizenship. This injures the staff as well as the children and is an issue in this action which could not be fully presented because of the erroneous rulings of the lower courts. The net result is that the inmates learn from each other the very things society does not want them to learn; namely, how to become more proficient in crime.

"An amicus describes some of the consequences which flow from the excessive use of pre-adjudication detention: "Locking up children charged with or suspected of offenses, before adjudication, probably does more to contribute to the army of habitual criminals than any other procedure in what is called the juvenile justice system. It is difficult for an adult who has not been through the experience to realize the terror that engulfs a younster the first time he loses his liberty and has to spend the night or several days or weeks in a cold, impersonal cell or room away from home or family. . . . the speed with which relatively innocent youngsters succumb to the infectious miasma of 'Juvy' and its practices, attitudes, and language . . . is not surprising . . . 'Official action may actually help to fix and perpetuate delinquency . . . The undesirable consequences . . . are maximized in programs that rely on institutionalizing the child." In re William M. 3 Cal.3d 16, 31.

As predicted in the complaint, Sylmar Juvenile Hall has, once again, become an overcrowded useless anachronism. Thousands of children have been held far too long in the idleness of this institution instead of being promptly processed and placed. Its huge size eats up vast amounts of tax money urgently needed in lawful constitutional alternative placement facilities and programs. In their mistaken efforts to maintain the status quo, of using huge institutions like Sylmar, the lower courts have wrongfully refused to enforce constitutional and statutory law to the great injury of children, staff and taxpayers and must be reversed.

". . . expenditures not required by the Constitution may not be given priority over those needed to remedy a deprivation of constitutional rights. This is why the courts have reiterated that no governmental unit may be excused from according its citizens their constitutional rights because of a lack of funds. See, e.g., Goldberg v. Kelly, 397 U.S. 254, 266, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970). Justice, then Judge, Blackmun plainly put it in Jackson v. Bishop, 404 F.2d 571, 580 (8th Cir. 1968):

> "Humane considerations and constitutional requirements are not, in this day, to be measured by dollar considerations. . . ."

And one of the earliest cases dealing with the state's obligation to maintain a constitutionally adequate penal system, eloquently and aptly stated:

> "Let there be no mistake in the matter; the obligation of the Respondents to eliminate existing unconstitutionalities does not depend upon what the Legislature may do, or upon what the Governor may do, or, indeed, upon what Respondents may actually be able to accomplish. If Arkansas is going to operate a Penitentiary System, it is going to have to be a system that is countenanced by the Constitution of the United States." Hot v. Sarver, 309 F.Supp. 362, 385 (E.E.Ark.1970), aff'd, 442 F2d 304 (8th Cir. 1971)." Rhem v. Malcolm, 377 F.Supp. 995, 999.

It is the obligation of respondents to provide programs and facilities which do not, as does Sylmar, inflict cruel and unusual punishment or violate constitutional due process. It is the obligation of respondents not to waste funds needed to accomplish this constitutional purpose.

Because the respondents have, and are continuing to violate constitutional and statutory law, as set out above as well as in the complaint, pleadings, trial and appeals, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeal of the State of California.

It is earnestly prayed that this writ be issued and that this matter be given priority as one of grave public urgency. It is also prayed that costs and fees be granted to petitioner since this has been a heavy burden of vital public interest

Respectfully submitted,

J. Alex Cota
Petitioner In Pro Per
P.O. Box 24352
Los Angeles, California
(213) 474-1672

Dated: October 1, 1980.

CERTIFIED FOR PUBLICATION

IN THE
Court Of Appeal Of The State Of California
SECOND APPELLATE DISTRICT
DIVISION ONE

J. ALEX COTA,

Plaintiff and Appellant,

COUNTY OF LOS ANGELES, AND PETE F. SCHABARUM; KENNETH HAHN, EDMUND D. EDELMAN, JAMES A. HAYES; AND BAXTER WARD, as members of the Board of Supervisors of Los Angeles County,

Defendants and Respondents.

2 Civil No. 54486

(Super. Ct. No. C 165603)

COURT OF APPEAL-SECOND DIST.
FILED
APR 30 1980
CLAY ROBBINS, JR. *Clerk*

Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County. August J. Goebel, Judge. Affirmed.

J. Alex Cota, in pro. per., for Plaintiff and Appellant.

John H. Larson, County Counsel, Paul T. Hanson, Deputy Counsel, for Defendants and Respondents.

J. Alex Cota and other taxpayers sued County of Los Angeles and members of the Board of Supervisors (board) to enjoin alleged illegal and wasteful expenditure of public funds (Code Civ. Proc., § 526a) for reconstruction of Sylmar Juvenile Hall after its destruction in the 1971 earthquake, and for a declaration of invalidity of such public expenditure (Code Civ.

Proc., § 863).[1] Judgment was entered denying declarations and denying injunction under Code of Civil Procedure, section 526a. Only Cota appeals (in propria persona) from the judgment.

Respondents moved this court to dismiss the appeal as moot on asserted grounds that the construction contract has been completed and accepted by the board, the contract price has been paid and the facility is "operational." For reasons hereinafter set forth, principally that the public interest compels determination of the validity of respondent's action, and judicial policy favors review of the matter on the merits we conclude that the appeal should not be dismissed as moot.

In February 1971 the county owned improved real property referred to as Sylmar Juvenile Hall, at 15900 Filbert Street in Sylmar, 28.3 miles from the Los Angeles civic center. On February 9, 1971, an earthquake caused substantial destruction to the facility rendering it uninhabitable and unfit for use.

In May 1976 the board members voted to reconstruct a juvenile hall on the site, and entered into a contract with Robert E. McKee, Inc. therefor. Originally the contract price was $12,450,000. At the time of trial (May 1977), the price was $12,768,972, of which $7,290,359 had been paid. [2]

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[1] Section 526a provides: "An action to obtain a judgment restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, . . . may be maintained against any officer thereof, . . . either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. . . ."

Section 863 provides: "If no proceedings have been brought by the public agency pursuant to this chapter [Chapter 9, Validation Proceedings], any interested person may bring an action . . . to determine the validity of such matter. The public agency shall be a defendant . . . ."

[2] A declaration submitted by respondents in support of their motion to dismiss the appeal states that the construction contract was 99.7 percent completed as of August 29, 1978, and $12,412,664.70 had been paid to McKee as of that date.

The site consists of 30 acres on a dead-end street, immediately surrounded by railroad tracks, warehouses and a highway. The site is enclosed by a 16-foot security wall. The buildings are constructed so that the rear of the buildings face the security wall, and the front of the buildings face a recreational area. Materials used in the construction were principally in the nature of clay masonry, rather than "cold concrete." There are no "tall buildings;" the buildings block out the security wall; multicolored decorations are used; and it is sought to have the facility appear "campus-like" and yet detain a juvenile in secure detention while protecting him from other detainees.[3] The capacity is 377 persons, including 156 detention beds for boys, 74 detention beds for girls, 40 beds for intensive care, 11 beds for infirmary, and 96 beds for a state supported intensive treatment program.

Construction of the facility was approved by the presiding judge of the juvenile court (as required by §850 of the Welf. & Inst. Code, *infra*). The California Youth Authority (CYA) approved the construction and found that it was in accordance with the minimum standards adopted by the CYA (as required by §210 [formerly §509.5] of said code, *infra*). Those approvals were before the Board of Supervisors when the members voted to reconstruct the buildings. Cost of the reconstruction to taxpayers will be approximately $17,500,000. The cost of detention per juvenile per day in Los Angeles County is $58.97 in a comparable facility—approximately $21,524 annually.

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[3] Several witnesses, including representatives of the probation department and the California Youth Authority, testified regarding the construction. Also, the court personally inspected the site. In its Announcement of Intended Decision, the court stated that no one who viewed the facility from the recreation areas could help but be awed by the size of the facility; that because the 30-acre site was available, it was to be used; if it was to be used at all, it had to be used in its entirety, hence the maximum utilization of the 30 acres; and if it were a private school, it could be visualized as in a "pastoral or country setting," with views to the mountains on two sides.

Plaintiff's complaint was filed on June 29, 1976. Defendant's answer included an affirmative defense that granting of the injunction would cause great hardship to the public. (Defendants also contended that Robert E. McKee Inc., contractor, was an indispensable party.)

The complaint alleged causes of action for illegal and wasteful expenditure of funds (Code Civ. Proc., § 526a) and for declaration of illegality of such public expenditure (Code Civ. Proc., § 863).[4] At trial, no evidence was presented on the second (§ 863) cause of action (illegality), or on pleaded issues relating to seismic activity at the site or as to minors held under section 601 of the Welfare and Institutions Code being detained with minors held under section 602 of said code.

The trial court excluded certain evidence as to future use of the building ruling *under the issues framed by the pleadings* that any evidence which would tend to establish future procedures or operations of the juvenile hall, except as they would be necessitated by reason of the building or buildings, their size, design or location, was irrelevant. The court stated that its reason for such ruling was that this was not the proper case to place on trial the entire juvenile justice system in Los Angeles County, and the court should not now pass upon procedures, rules and regulations not yet promulgated by the probation department for operation of Sylmar Juvenile Hall.

At close of trial argument, counsel for plaintiffs moved to amend their complaint to include a claim to enjoin expenditure of public funds for *operation* and *use* of Sylmar Juvenile Hall (as distinguished from the plaintiffs' complaint to enjoin *construction* of the hall). The motion was denied on the grounds that it was untimely and would inject issues previously ruled upon by the court.

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[4] It was stipulated that plaintiffs were taxpayers and had standing to bring this suit.

Plaintiffs other than Cota objected to proposed findings of fact. The objections in part were granted. Findings made were as follows: The contract between county and McKee was not illegal or void. Entry into the contract by the board was not a manifest abuse of discretion. Expenditures of funds by the board for reconstruction of Sylmar Juvenile Hall was not a manifest abuse of discretion and was not a waste of public funds. Expenditure of funds was not illegal under the federal or state Constitution, Welfare and Institutions Code, CYA standards for juvenile halls, or any other legal authority. The injunction sought would cause severe harm to defendants and severe harm and hardship to the public. The alleged acts by the board were lawful exercise of public office. CYA found Sylmar Juvenile Hall to be in accord with CYA's standards and approved its reconstruction. CYA standards have no mandatory provision imposing limit on the size of an institution used for detention.[5]

Conclusions of law were that the declarations and the injunctive relief sought, should be denied.

Appellant Cota's briefs, filed in propria persona, state approximately twenty points. In essence, his contentions are that the evidence does not support the findings that the expenditures for reconstruction of the facility were not illegal or a waste of public funds; and that the trial court erred in excluding evidence of future operations of the facility except as such operations were necessitated by reason of the size, design, and location of the buildings.

Preliminarily, we consider respondents' contention that the case is moot. In support of their motion to dismiss on that ground, respondents submitted declarations by two project managers of the construction contract between county and McKee. One declaration states that the construction contract is

[5] A contention of plaintiffs was that the county should construct several small facilities in various communities, rather than one large facility in Sylmar.

"about 99% completed as of July 14, 1978," and that the juvenile hall is scheduled to be occupied and fully operational by July 31, 1978. The other declaration (of later date) states that it is "about 99.7% completed as of August 29, 1978," and is scheduled to be fully occupied and operational by September 18, 1978.

Based upon those declarations, respondents assert that the case is moot, citing *Bernard* v. *Weaber* (1913) 23 Cal.App. 532. There, the only relief sought was an injunction restraining issuance of bonds. (P. 534; see *City of Plymouth* v. *Superior Court*, 8 Cal.App.3d 454, 466.) *Bernard* has been distinguished where plaintiffs in addition to seeking injunctive relief (restraining collection of assessments) also sought declaratory judgment invalidating the assessments. (*City of Plymouth* v. *Superior Court*, 8 Cal.App.3d 454, 466.)

The first cause of action sought injunctive relief (Code Civ. Proc., § 526a) enjoining reconstruction of the facility; the second cause of action sought declarations (Code Civ. Proc., § 863) as to validity of acts of defendants. Also, an issue herein (although not expressly raised by appellant) is whether the trial court abused its discretion in denying plaintiffs' request to amend the complaint.

Respondents argue that since no evidence was presented on the second (§ 863) cause of action, "this appeal is solely from denial of the injunction under C.C.P., § 526a, for waste of public funds."

Although there is a recital in the findings that no evidence was presented as to the "petition" under section 863, the judgment expressly stated that the injunctive relief sought (§ 526a) is denied, and the declarations sought (§ 863) are denied. Cota appealed from the "entire judgment." Moreover, determination of issues of validity of the acts of defendant county and public officers and of asserted wastefulness of public funds in constructing the juvenile hall are matters of substantial public interest. (*Eye Dog Foundation* v. *State Board of Guide*

Dogs for the Blind, 67 Cal.2d 536, 542; *County of Madera* v. *Glendron,* 59 Cal.2d 798, 804; *DiGiorgio Fruit Corp.* v. *Dept. of Employment,* 56 Cal.2d 54, 58.) The policy of the law is to decide appeals on the merits. (*Hosford* v. *Henry,* 107 Cal.App.2d 765, 777 [motion to dismiss appeal on mootness ground denied].) Thus, we deny the motion and consider the appeal on the merits.

In attacking the trial court's findings, appellant argues that reconstruction of the facility is contrary to constitutional and statutory law and is wasteful of tax funds in that smaller, decentralized community-based facilities can better utilize family and school ties and other programs to combat juvenile delinquency than a huge, remotely located facility like Sylmar; that Sylmar, like its predecessor, is an "obsolete, tax-wasting anachronism"; that the "entire history" of juvenile hall expansion is to "build more and larger institutions only to have them immediately overcrowded, ineffective and wasteful of tax funds"; and that the design of Sylmar, its predecessor, and other juvenile halls in the county is basically a "lock-up," disciplinary facility rather than, in the "least restrictive alternative," a "home-like" facility. [6]

Appellant's general attack on the entire juvenile program in the county, past and present, goes far beyond the scope of the issues framed by the pleadings. Those issues were whether *construction* of this facility was illegal or a waste of funds. We note further that appellant's statement of facts has scant reference to the record before us and sets forth a variety of facts outside the record. The authorities cited by him are not

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[6] Appellant also asserts that the Board of Supervisors improperly voted to rebuild Sylmar. Public policy to rebuild the facility was a matter for that legislative body. The record herein (including papers filed by plaintiffs in their application for preliminary injunction) shows extensive consideration of policy by the members of the Board of Supervisors before their vote approving the construction, and active participation in those proceedings by interested citizenry, including Cota himself.

specifically apposite to the issues herein as to legality of the construction or waste of public funds. He cites no authority that design, size, location and manner of construction of a facility of this kind is illegal or constitutes a waste of public funds. His briefs fail to support the validity of his challenge to the trial court's findings.

The trial briefs emphasized *City of Ceres* v. *City of Modesto,* 274 Cal.App.2d 545, as to what constitutes waste of public funds under section 526a; and, on the issue of legality, provisions of the Welfare and Institutions Code (§§ 881, 851, 881,851, 850, 210, 209, 202), federal and state Constitutions, California Youth Authority standards for juvenile halls, and the Federal Juvenile Justice and Delinquency Prevention Act of 1974. *City of Ceres* v. *City of Modesto,* 274 Cal.App.2d 545 stated, as did the subsequent case of *Trim, Inc.* v. *County of Monterey,* 86 Cal.App.3d 539, 543, that the term "waste" as used in section 526a means more than an alleged mistake by public officials in matters involving the exercise of judgment or discretion; although the court must not close its eyes to wasteful, improvident and completely unnecessary spending, it should not attempt to enjoin every expenditure which does not meet with a taxpayer's approval; but a taxpayer complaining of government waste may state a cause of action under section 526a by alleging that funds are being expended for a project with no public benefit and no useful purpose. (Pp. 555-556.) Both *City of Ceres* and *Trim* were on appeal from a judgment of dismissal after demurrer was sustained without leave to amend. *City of Ceres* held that appellant Lacy might have been able to state a cause of action for injunctive relief against Modesto had he been given the opportunity to do so (pp. 555-556). *Trim* held that the allegations were insufficient to state a cause of action for relief under section 526a (p. 543).

Section 881, Welfare and Institutions Code provides in pertinent part: "The board of supervisors of any county may, . . . establish juvenile homes, . . . within . . . the county, to which persons made wards of the court on the ground of fitting the

description in Section 601 or Section 602 may be committed. . . ."[7] Section 850 provides: "The board of supervisors . . . shall provide and maintain, . . . in a location approved by . . . the presiding judge of the juvenile court, a suitable house or place for the detention of wards . . . Such house or place shall be known as the 'juvenile hall' of the county. . . ." Section 851: "The juvenile hall shall not be in, or connected with, any jail or prison, and shall not be deemed to be nor to be treated as a penal institution. It shall be conducted in all respects as nearly like a home as possible."

Section 210, Welfare and Institutions Code provides: "The Youth Authority shall adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors. . . ." Under section 209 a judge of the juvenile court shall inspect facilities annually and note in the minutes "whether the jail, juvenile hall, or lockup is a suitable place for confinement of minors." It provides further for similar inspection by the Youth Authority. Section 202 states purposes of the Juvenile Court Law (§§ 200 et seq.), including purposes "(a) . . . to protect the public from criminal conduct by minors; to impose on the minor a sense of responsibility for his own acts; . . . to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents. . . ."; and "(b) . . . protection of the public from the consequences of criminal activity, . . ."

The instant case (as distinguished from *City of Ceres* and *Trim* decided on demurrer) proceeded to trial, and the court found that expenditure of funds for reconstruction of the juvenile hall was not a waste of public funds and was not illegal under the above cited sections of the Welfare and Institutions Code, the federal or state Constitutions, CYA standards, the

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[7] Prior to the 1976 amendment, section 881 applied to wards fitting the description in sections 601 and 602. In the instant case, as the court found, no evidence was presented that minors held under section 601 would be detained with minors held under section 602.

Federal Juvenile Justice and Delinquency Prevention Act of 1974, or any other legal authority. Substantial evidence supports those findings.[8]

Furthermore, even were we to assume that plaintiff might properly claim a right to injunctive relief on the ground of waste or illegality, such relief can be denied where it would cause severe harm to the public. (See *Ukhtomski* v. *Tioga Mutual Water Co.*, 12 Cal.App.2d 726, 728-729.) Even as between private parties, a court should consider the relative hardship of the parties and balance the equities in deciding whether to issue an injunction halting construction of the magnitude herein. (See *Transcentury Properties, Inc.* v. *State of California,* 41 Cal.App.3d 835, 843; *Baglione* v. *Leué,* 160 Cal.App.2d 731, 735; 4 Rest., 2d Torts, § 941, pp. 580 et seq.) Where injury would result to the public, an additional reason arises for refusal to grant injunctive relief. (*Ukhtomski* v. *Tioga Mutual Water Co., supra,* p. 729; see *Brown Derby Hollywood Corp.* v. *Hatton*, 61 Cal.2d 855, 859; *Keith* v. *Superior Court,* 26 Cal.App.3d 521, 525.)

Here, not only are defendants public agencies, but there was evidence that approximately $7,000,000 was paid by defendants to McKee (contractor) for construction as of the time of trial ($12,412,664.70 as of Auugust 29, 1978). If construction had been stopped prior to completion, the claims by McKee could have been greater than the cost of completion; and subcontractors were bound to their contracts only until December 31, 1977. The trial court found that the injunction sought by plaintiffs would cause "severe harm to defendants

[8] In the trial court, plaintiffs asserted (as does Cota on appeal) the constitutional principle of "least restrictive alternative: that persons who are incarcerated are entitled to have their liberty restricted only to the extent necessary to secure the government's goal; and that the size, design, and location of the juvenile hall would be an unnecessary restriction of liberty of the detainees. The trial court's written Announcement of Decision discussed that principle along with the detention aspects of the above cited provisions of the Welfare and Institutions Code.

and severe harm and hardship to the public." The evidence supports the findings. That damages might not have been compensable to plaintiffs upon denial of injunctive relief did not preclude the trial court from exercising its discretion in balancing the equities of relative hardship where there was evidence of severe harm and hardship to the public.

By reason of the foregoing conclusions as to denial of injunctive relief, it is unnecessary to discuss respondents' contention that McKee was an indispensable party.[9]

The trial court excluded as irrelevant, evidence tending to establish future procedures or operations of the facility, except as such procedures or operations might be directly necessitated by reason of the building, its size, location, and physical factors. Cota contends that the court erred in excluding evidence of future use of the juvenile hall.

Evidence which is not pertinent to the issues raised by the pleadings is immaterial, and it is error to allow introduction of such evidence. (*Rainer* v. *Community Memorial Hosp.*, 18 Cal.App.3d 240, 253.) Here, the complaint sought injunction only against *construction* of the facility—it did not seek injunction against *future operation* or *use* of the facility. Obviously, the evidence of future use and operation was beyond the scope of the issues raised by the pleadings. Plaintiffs belatedly recognized this when at the close of the lengthy trial they moved to amend the complaint to include request for injunction against use and operation when the facility is completed. The motion was denied on the grounds that it was "untimely made" and sought to inject into the complaint issues

[9] The trial court, by reason of its findings and conclusions, did not reach the asserted issue whether McKee was an indispensable party. Respondents claim that McKee was an indispensable party under section 389 of the Code of Civil Procedure, and that McKee's absence was a jurisdictional defect. Respondents assert that statements in *Kraus* v. *Willow Park Public Golf Course*, 73 Cal.App.3d 354, 364 et seq., that failure to join an indispensable party is not a jurisdictional defect in the fundamental sense are "dicta."

ruled on by the court in a preliminary ruling. Granting of the motion would have been prejudicial to defendants, inasmuch as they were not prepared to defend against such evidence. Denial of the motion, on the other hand, was not prejudicial to plaintiffs, inasmuch as the facility was not operational at that time, and plaintiffs can bring action on asserted use and operation now that the facility has become operational. The court did not abuse its discretion in denying the belated motion to amend the complaint.

Just prior to oral argument before this court, Cota submitted a lengthy letter brief advising that a Union local of probation officers recently has brought suit against the county seeking to enjoin transfer of probation officers from field positions to juvenile halls. He asserts that "It is quite apparent from the numerous declarations submitted by probation officers in that case that the county is in violation of law in constructing juvenile halls like Sylmar, Central and Los Padrinos," and thereby launches still another general attack on the county juvenile program and the manner of operating the facilities, matters not properly within the scope of this appeal. Because our review is only to those matters before the trial court and these declarations are not part of the record, nor could they be inasmuch as they are allegedly part of a case filed subsequent to the trial, we reject Cota's request that we take judicial notice of the declarations.

In oral argument Cota asserted the illegality of current and future operating procedures of Sylmar, of certain conditions now existing in the facility, i.e., lack of individual plumbing in some locked rooms, cement bunks, no pay telephones, the remote location of Sylmar and the transfer of juveniles from unit to unit, and of various aspects of the juvenile justice system. Nor were these matters before the trial court in the context of operating procedures.

At the time of trial Sylmar was not in operation and no operating rules and regulations had been promulgated. Whatever testimony relative to operational problems was adduced at trial was purely conjectural and referred solely to the specifications and plans for the construction contract. In light of these issues before the trial court of the capacity and nature of Sylmar and the detention policies for juveniles in Los Angeles County, and the scope of the pleadings seeking prevention of construction of the entire facility (which included courtrooms, classrooms, gym, pool, kitchen, medical facility, chapel and living spaces for the wards) and complete cessation of payments under the construction contract, Cota's argument before this court based on the inadequacy and/or illegality of the operational procedures of the facility was not and could not be material. No issues relative to bathroom facilities and cement beds were raised and no evidence was admitted thereon at trial except insofar as they related to the plans and specifications for the construction of the facility.

On the issues before the trial court, any evidence that tended to establish future procedures or operations of juvenile hall by the probation department except insofar as they would be necessitated by reason of the buildings, and their site, size, capacity, design and/or location, was deemed irrelevant. The trial court felt that this was not the case to place on trial the entire juvenile justice system or to pass on procedural rules and regulations of the probation department for the operation of Sylmar not yet in existence. But whatever evidence there was relating to toilet facilities and cement beds consisted also of the court's observations at the site. In the court's announcement of intended decision, an extensive and well reasoned document, the judge concluded that "The principal problem with part of plaintiffs' position is they desire the optimum of conditions, i.e., telephones, private baths, no regimentation, no noise—almost a country club atmosphere; not just as nearly like a home as possible—without regard to the costs entailed or the realities of

the situation. This detracts from their principal position."[10] Although the issues, the evidence, the announcement of intended decision, the findings and plaintiffs' proposed counterfindings demonstrate the minor significance at trial of those matters relating to lack of individual plumbing in some bedrooms and the concrete beds, all of which was clearly reflected in the plans and specifications for the construction contract, they took on major significance for Mr. Cota in oral argument before this court even though 95 percent of the trial focused on the capacity of Sylmar and the detention policies for juveniles; no injunction to compel the installation of plumbing on an individual basis or the use of metal beds was requested in the pleadings. Although the bulk of the matters urged on appeal by Mr. Cota in his appellate briefs, letters and oral argument are evidentiary in nature relating to operating procedure not before the trial court and not within the issues, he is not without appropriate legal remedy for asserted unlawful operating procedures now that the facility is in operation.

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[10] In the announcement of intended decision, the judge characterized plaintiffs' assertion that use by juveniles of central toilet and shower facilities is dehumanizing as "absurd," comparing them with the group shower facilities in public school gym facilities and private clubs. The plaintiffs complained that individual rooms have no light switches; but the evidence established and the judge found that safety and other factors warrant this design feature. They also complained individual rooms have concrete beds; but the evidence established that the concrete beds are designed to support mattresses which will be used, and the maintenance factor alone (where the evidence establishes that minors urinate on the beds causing metal to rust, they dismantle them to make weapons or break them up in acts of vandalism) warrants construction of the design and materials utilized. So too the court was not impressed with plaintiffs' assertion that minors foul their rooms because they have no individual toilet facilities and the probation officer does not respond in time to their knock, and commented that the evidence establishes that some minors urinate and defecate in their rooms more out of defiance of authority than as a matter of necessity. Finally, the court said the evidence shows that the California Youth Authority found Sylmar to be in accord with its minimum standards adopted by California Youth Authority in 1973, and approved its reconstruction; this included the toilet facilities and beds described in the plans and specifications.

Each party requests award of costs on appeal—Cota on the ground that this case is a matter of great public interest; respondents on the grounds that the case has been moot since completion of the construction and that Cota has just "re-hashed" arguments made at the trial level and added superfluous, irrelevant matter that was not before the trial court.

The trial court ordered the parties to bear their own costs. We too order that each party shall bear its own costs.

The judgment is affirmed.

CERTIFIED FOR PUBLICATION

LILLIE, Acting P.J.

We concur:

HANSON, J.

MARSHALL, J.*

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* Assigned by the Chairperson of the Judicial Council.

No. 80-555

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

J. ALEX COTA,

Petitioner,

vs.

COUNTY OF LOS ANGELES, et al.,

Respondents.

Opposition to Petition for a Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District, Division One

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QUESTION PRESENTED

Does the mere re-construction (as opposed to operation or use), of a juvenile hall damaged by earthquake, by the County of Los Angeles, constitute an illegal expenditure of public funds under federal law or the Constitution of the United States?

No. 80-555

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SUPREME COURT
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MEMORANDUM IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

Respondents, County of Los Angeles, Peter F. Schabarum, Kenneth Hahn, Edmund D. Edelman, James A. Hayes, and Baxter Ward, members of the Board of Supervisors of Los Angeles County, request that this petition for a writ of certiorari be denied.

STATEMENT OF THE CASE AND MEMORANDUM IN OPPOSITION TO PETITION FOR CERTIORARI

The author of this response has been the deputy county counsel primarily responsible for this case from filing, through trial, and through appeal.

Of the original plaintiffs, only Mr. Cota has appealed from the judgment of the trial court denying injunctive relief against expenditure for re-construction of the juvenile hall. Appendix (hereafter "A") 2.

This action was tried only under California Code of Civil Procedure, §526a, by plaintiff-taxpayers to enjoin the expenditure of public funds for the re-construction of Sylmar Juvenile Hall, in Los Angeles County, after damage by earthquake, on the grounds of illegal and wasteful expenditure of public funds.

At the time of trial the facility was only about 50 per cent completed. A. 2, 10.

The complaint did not seek an injunction of the operation of the juvenile hall. At the close of their final argument counsel for plaintiffs moved to amend their complaint to include an injunction of operation and use. This motion was denied. A. 4, 11-12.

The structure is now finished and in operation. A. 5-6. Evidence of operation and use

was excluded from the trial record on the ground of relevance. A. 4, 11-12.

The trial court did not rule in any way that operation and use of the structure were in accord with federal law and the U.S. Constitution.

As pertains to the jurisdiction of this Court, the trial court ruled only that construction of the facility did not violate federal law or the U.S. Constitution.

A finding of illegality of a public expenditure, under federal law or the U.S. Constitution, would have been a ground for granting an injunction under California Code of Civil Procedure, §526a.

Future operation and use of Sylmar Juvenile Hall were not sought to be enjoined by the plaintiffs in their complaint. A. 4.

Operation and use, as opposed to construction. never became issues in the trial. A. 4, 11-12.

Petitioner cites no authority for the proposition that the expenditure of public funds for the re-construction of this juvenile hall, damaged by an earthquate in 1971, is illegal under federal law or the U.S. Constitution.

Just as the complaint was never modified to include future operation and use of the facility, plaintiffs never sought to reduce the scope of the injunction as to expenditure for re-construction.

Throughout the trial plaintiffs sought to completely and permanently halt re-construction work although the work was about 50 per cent completed and seven million dollars had already been paid to the contractor.

They never sought to simply modify the plans of re-construction but always sought a permanent injunction of expenditures for the entire facility: the courtrooms, the classrooms, the gym, the swimming pool, the kitchen, the medical facility, the chapel, the laundry, the grounds, the athletic fields, and the living spaces for the wards.

No known case in any jurisdiction has held that mere construction of a juvenile hall, as opposed to operation and use, may violate the U.S. Constitution.

Because of the doctrine of federalism, the federal congress does not have the power to regulate construction of juvenile halls by sub-divisions of the states. In any case, no federal law purports to regulate construction of juvenile halls by cities and counties.

Since this case was only about re-construction of a juvenile hall, damaged by an earthquake, this court should deny the petition for certiorari because the challenged expenditures were not illegal under federal law or the U.S. Constitution,

and were clearly within the authority of the local government or the State of California.

Respectfully submitted,

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